APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 74-1867

Allen J. Zimmer,
Appellant,
v.
United States of America,
Appellee.

Appeal from the United States District Court for the Western District of Missouri.

Submitted: February 11, 1975

Filed: February 14, 1975

Before Matthes, Senior Circuit Judge, Heaney and Webster, Circuit Judges.

ORDER OF AFFIRMANCE

Having duly considered the record and briefs in this case, the oral argument of retained counsel for appellant, and being fully informed in the premises, the court is of the opinion that

this appeal is wholly lacking in merit and, consequently, affirms the judgment of the district court.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

[Not to be printed or published]

APPENDIX B

In the United States District Court for the
Western District of Missouri
Southern Division

United States of America,
Plaintiff,
vs.
Allen J. Zimmer,
Defendant.
No. 74CR331-S

ORDER AFFIRMING CONVICTION

(Filed October 25, 1974)

This is an appeal from defendant's conviction upon his plea of guilty before the United States Magistrate of the offense of careless and imprudent driving in violation of 18 U.S.C. § 13 (1970), and Rev. Stat. Mo. § 304.010 (1969). Because the matters which may be challenged on appeal after a plea of guilty are limited, the Court, by order entered September 9, 1974, directed defendant to prepare and file a brief setting forth with specificity the issue or issues sought to be raised in this appeal and his points of legal authority in support thereof. The United States was given the opportunity to respond to defendant's brief. These briefs have now been filed with the Court.

On July 29, 1974, defendant appeared personally and by his retained counsel before the United States Magistrate at Ft. Leonard Wood, Missouri. At that time the defendant know-

ingly and voluntarily waived his right to trial before a federal district judge and jury and consented in writing to be tried by the United States Magistrate. Defendant was thereupon arraigned and entered a plea of guilty. The Magistrate sentenced defendant to pay a fine of $300 and to be committed to the Attorney General or his representative for a period of 20 days. Execution of the term of imprisonment was suspended and the defendant was placed on probation for a period of three months with the provision that if the fine were not paid before the order of probation became effective, it should be a special condition of probation that the fine be paid on or before November 15, 1974. Execution of the order of probation was stayed for a period of 30 days with the provision that upon payment of the fine in satisfaction of the special condition of probation, the order of probation would be automatically set aside.

Defendant raises essentially three matters in this appeal:

1. That there was no factual basis for the plea entered by the defendant as required by Rule 11, Fed. R. Crim. P.

2. That the plea was not made voluntarily with an understanding of the nature of the charge and the consequences of the plea as required by Rule 11, Fed. R. Crim. P.

3. The fine imposed by the magistrate was excessive in view of the normal fine for such an offense, as indicated by the Assistant United States Attorney.

The Court has examined the record herein, the briefs submitted by the parties and the Magistrate's excellent Memorandum Findings of Fact and Conclusions of Law and concludes that the conviction and sentence should be affirmed. The matters raised in points 1 and 2 above are not matters normally considered on appeal; rather, they would appear to be more cognizable in a motion pursuant to 28 U.S.C. § 2255 (1970).

However, because defendant is not a prisoner in federal custody, this appeal cannot be considered as a motion under section 2255. However, indulging in every inference in favor of defendant, the Court will consider the points raised by defendant's brief as if it was a section 2255 motion. The Court has read the transcript carefully. The Magistrate Judge carefully and explicitly explained to the defendant the maximum possible sentence, and, by defendant's affirmative responses, established the factual basis of the offense and the plea of guilty. Accordingly, we find and conclude that defendant was advised of the nature of the charge and the consequences of his plea, that the plea was supported by a factual basis as required by Rule 11, and that the sentence imposed did not constitute an abuse of discretion by the Magistrate. *See, Woosley v. United States*, 478 F.2d 138 (8th Cir. 1973).

It is therefore

Ordered that the conviction and sentence imposed herein be, and hereby are, affirmed; and it is

Ordered that the order staying execution of the sentence imposed herein be, and hereby is, dissolved.

WM. R. COLLINSON
District Judge

APPENDIX C

United States Court of Appeals
For the Eighth Circuit

74-1867

September Term, 1974

The United States,	Appellee,	Appeal from the United States District Court for the Western District of Missouri
vs.		
Allen J. Zimmer,	Appellant.	

The Court having considered petition for rehearing en banc filed by counsel for appellant and, being fully advised in the premises, it is ordered that the petition for rehearing en banc be, and it is hereby, denied.

Considering the petition for rehearing en banc as a petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

March 6, 1975

APPENDIX D

In the United States District Court for the
Western District of Missouri
Southern Division

United States of America, Plaintiff,		
v.	-	Criminal Action. No. 74CR331-S.
Allen J. Zimmer, Defendant.		

TRANSCRIPT OF PROCEEDINGS BEFORE UNITED STATES MAGISTRATE ON JULY 29, 1974

On this date the defendant appeared personally and by his retained counsel, Charles M. Wesley, Waynesville, Missouri, before the undersigned United States magistrate. The United States appeared by Donald R. Cooley, Assistant United States Attorney. Thereupon, the following proceedings were had:

United States Magistrate: This is United States v. Allen J. Zimmer, No. 74CR331-S. The information has been filed today, July 29, 1974, and the defendant is present personally by his retained counsel, Charles M. Wesley. The United States is present by Donald R. Cooley. The information charges that on or about July 24, 1974, at Fort Leonard Wood, Missouri, on lands within the exclusive jurisdiction of the United States in the Western District of Missouri, Allen J. Zimmer did operate a motor vehicle on public roads within the boundaries of said military reservation to-wit: in a careless and imprudent manner by

weaving back and forth across a designated center line of the public road on which he was traveling, all in violation of 18 United States Code, Section 13, and Vernon's Annotated Missouri Statutes, Section 304.010. You have the right not to make any statement and any statement made by you may be used against you in the prosecution of this case. You have the right to retain counsel, which you have done. You have the right to trial before a federal district judge and by a jury before that judge in which you have the right to attend and testify, or not testify, if you would like not to, and no adverse inference can be drawn from your failure or refusal to testify. You have the right to confront and cross-examine the witnesses and evidence that the government may present against you and the government bears the burden of proving your guilt beyond a reasonable doubt. You have the right to waive that right and consent to be tried by the United States Magistrate, sitting without a jury, in which case all of the same procedural rights attach, except the right to trial by a jury. The trial would be by me sitting without a jury. And if it is necessary to continue your case from today for some reason, you have the right to be admitted to bail upon such terms and conditions that will reasonably assure your appearance as required. Now, what is the choice of defendant and his counsel with respect to the right of trial by jury before a federal district judge?

Mr. Wesley: We waive that right.

United States Magistrate: I will hand the defendant and his counsel the written form of waiver of right to trial by jury before a federal district judge, which recites that I advised the defendant fully of such right and with full knowledge of it he has elected to waive it, and consented to be tried by the United States Magistrate. If that's the choice of the defendant, the defendant should execute it

on the line provided for his signature and his counsel should sign it as a witness.

United States Magistrate: All right, will you step up here. We will go ahead with the arraignment and plea in this case, since the defendant has executed the written form of right to trial by a jury before a federal district judge. Now, I have read the information to you. Do you understand what you are charged with in the information?

Mr. Zimmer: Yes, your Honor.

United States Magistrate: And if you are convicted on this charge, the maximum possible punishment is $1,000 fine or one year imprisonment, or both, do you understand that?

Mr. Zimmer: Yes.

United States Magistrate: How do you plead to the charge contained in the information?

Mr. Zimmer: Guilty.

United States Magistrate: Have you been the subject of any threat or promise to induce you to plead guilty?

Mr. Zimmer: No.

United States Magistrate: Has anybody told you that in way of punishment it will go easier for you if you pleaded guilty, rather than assert your right to trial and plead not guilty?

Mr. Zimmer: No.

United States Magistrate: And, do you recognize that, even though you have waived your right to trial by a jury before a federal district judge, if you did not plead guilty, you would still have the right to a full trial before me sitting without a jury, and that your guilty plea waives that right?

Mr. Zimmer: Yes.

United States Magistrate: And, are you pleading guilty because in fact you did on or about June 24, 1974, Fort Leonard Wood, operate a motor vehicle in a careless and imprudent manner by weaving back and forth across a designated center line on the public road on which you were traveling?

Mr. Zimmer: Yes.

United States Magistrate: All right, I will accept the guilty plea, and I will forego the ordering of a pre-sentence investigation, unless there is some objection to it by counsel or the defendant. Do you want to have a pre-sentence investigation made before I impose sentence in this case?

Mr. Zimmer: No.

United States Magistrate: Do you wish to make any statement in mitigation of punishment?

Mr. Zimmer: No.

United States Magistrate: Do you wish to make any statement?

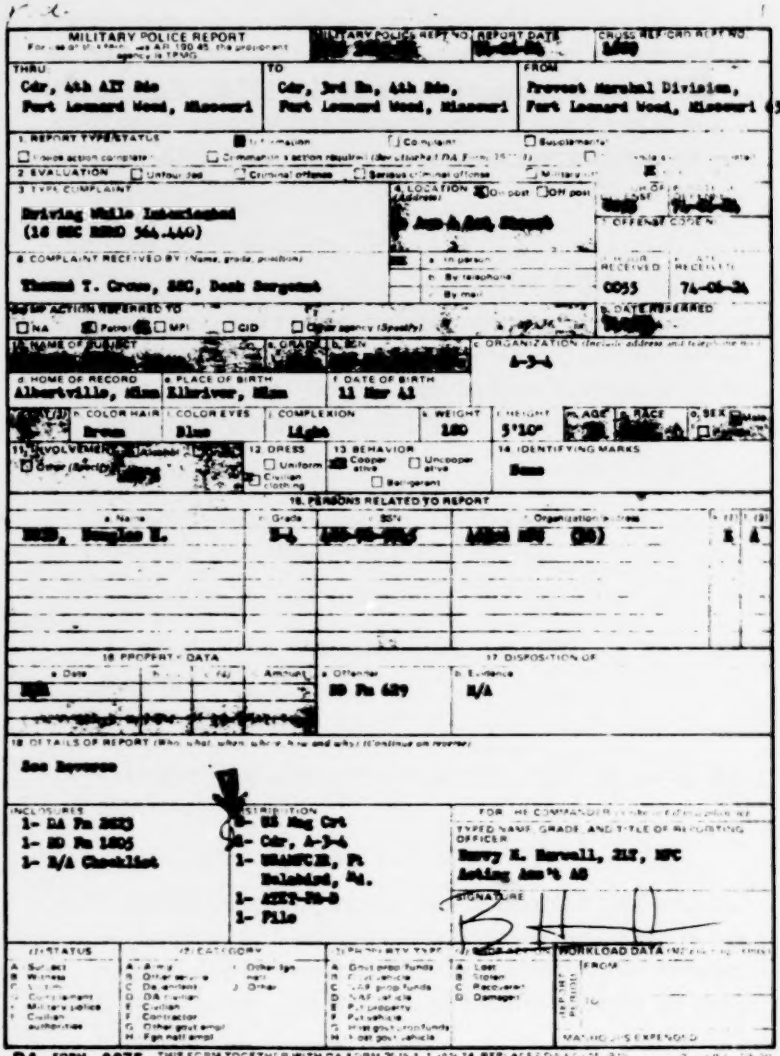
Mr. Wesley: No, sir.

United States Magistrate: Do you wish to make any recommendation?

Mr. Cooley: No, sir.

United States Magistrate: Its the judgment and sentence of the court that the defendant be sentenced to pay a fine of $300 and be committed to the custody of the Attorney General or his authorized representative to serve 20 days' imprisonment, but the execution of so much of the sentence as provides for the 20 days' imprisonment is suspended, and the defendant is placed on probation for a period of 3 months. The commencement of the probationary period is stayed for a period of 30 days, at which time it will commence if the fine has not theretofore been

paid, and it will be a special condition of the probationary period, if it does commence, that the defendant pay the $300 fine on or before November 15, 1974. If any appeal is to be taken from the judgment and sentence of the court, a written notice of appeal must be filed with the clerk within 10 days.



MILITARY POLICE REPORT

THRU: Cdr, 4th AIT Bde, Fort Leonard Wood, Missouri

TO: Cdr, 3rd Bn, 4th Bde, Fort Leonard Wood, Missouri

FROM: Provost Marshal Division, Fort Leonard Wood, Missouri

3 TYPE COMPLAINT: Driving While Intoxicated (16 USC REGO 564.440)

8 COMPLAINT RECEIVED BY: Thomas T. Cross, SSG, Desk Sergeant

RECEIVED: 0055 74-06-24

11 NAME OF SUBJECT: [redacted]

c ORGANIZATION: A-3-4

d HOME OF RECORD: Albertville, Minn

e PLACE OF BIRTH: Elkriver, Minn

f DATE OF BIRTH: 11 Nov 53

h COLOR HAIR: Brown

i COLOR EYES: Blue

j COMPLEXION: Light

k WEIGHT: 180

l HEIGHT: 5'10"

15 INVOLVEMENT: Other (Specify)

16 DRESS: Uniform; Civilian clothing

17 BEHAVIOR: Cooperative; Uncooperative; Belligerent

18 IDENTIFYING MARKS: None

18. PERSONS RELATED TO REPORT

a Name	c Grade	d SSN	f Organization	g (1)	g (2)
[redacted], Douglas L.	E-4	[redacted]	[redacted] (3d Bn)	X	A

18 PROPERTY DATA

a Date	Amount
N/A	

17 DISPOSITION OF

a Offender	b Evidence
DD Fm 629	N/A

19 DETAILS OF REPORT (Who, what, when, where, how and why): See Reverse

ENCLOSURES:
1- DA Fm 2823
1- DD Fm 1805
1- N/A Checklist

DISTRIBUTION:
1- HHC Bn Cdr
1- Cdr, A-3-4
1- USAMPCH, Ft Belvoir, Va.
1- ATZT-PA-O
1- File

FOR THE COMMANDER:
TYPED NAME, GRADE AND TITLE OF REPORTING OFFICER: Harry K. Harrell, 2LT, MPC
Acting Asst S3
SIGNATURE: [redacted]

(1) STATUS: A Subject; B Witness; C Complainant; D Military police; E Civilian authorities

(2) CATEGORY: A Army; B Other service; C Dependent; D DA civilian; E Civilian; F Contractor; G Other govt empl; H Fgn natl empl; J Other

(3) PROPERTY TYPE: A Govt-owned funds; B Privately owned vehicle; C NAF-owned funds; D NAF vehicle; E Pvt property; F Pvt vehicle; G Govt-owned funds; H Govt vehicle

(4) RECOVERY STATUS: A Lost; B Stolen; C Recovered; D Damaged

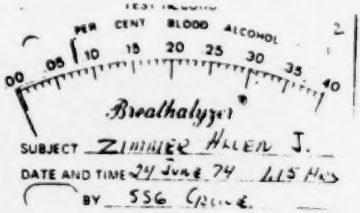
WORKLOAD DATA: FROM

DA FORM 3975 1 JAN 74 — THIS FORM TOGETHER WITH DA FORM 3975-1, 1 JAN 74, REPLACES DA FORM 3975, 1 NOV 72 AND DA FORM 19-33, 1 SEP 60, WHICH ARE OBSOLETE

On 24 June 1974, at approx 0055 hrs, the subject was observed operating a 1973 Ford (LTD) white/blue , Minn Lic 6484 in a hazardous manner on Missouri Ave. The subject's vehicle was stopped at Mo Ave and First St and upon conversing with the subject an odor of alcohol was detected on the subject's breath. The subject was apprehended, advised of his legal rights against self- incrimination, and of the Implied Consent law, and was transported to the PHD for further disposition. A B/A test was administered at the PHD, the results were .08 %.

Commander may take no action on traffic offenses, action to be taken by US Magistrate ....

Commander's attention is invited to the requirements of AR 600-31 !!!!!!!



SUBJECT ZIMMER ALLEN J.

DATE AND TIME 24 June 74 1115 Hrs

BY SSG Crews

BREATHALYZER OPERATIONAL CHECK LIST

Name of subject ZIMMER ALLEN J. Date 24 June 74

Time (of test) 1115 Blood Alcohol 0.08 % Ampul Control No. 5

Operator SSG Crews Witness

Instrument BREATHALYZER No 900 M

V

1 ☐ Observe subject for twenty minutes prior to testing to prevent oral intake of any material

PREPARATION

2 ☑ Throw SWITCH to "ON", wait until THERMOMETER shows 50° ± 3° C

3 ☑ Gauge TEST AMPUL and insert in left hand holder

4 ☑ Gauge TEST AMPUL open, insert BUBBLER and connect to outlet

PURGE

5 ☐ Turn to TAKE, flush out, turn to ANALYZE

6 ☑ When RED empty signal appears, wait 1½ minutes, turn on LIGHT BALANCE

7 ☑ Set BLOOD ALCOHOL POINTER on START line

ANALYSIS 1115

8 ☑ Turn to TAKE, take breath sample, turn to ANALYZE (record time)

9 ☑ When RED empty signal appears, wait 1½ minutes, turn on LIGHT BALANCE

Record answer, dispose of test ampul, TURN CONTROL KNOB to "OFF"

Transcript Page 5

VIOLATION NOTICE FRED IN — UNITED STATES DISTRICT COURT 9715 DATE OF NOTICE June 24, 1974 ▶A946793

VIOLATION(S) CHARGED: 4 Wrongful Possession

TRAFFIC

☐ PASSED OVERTAKE

☐ PASSED IN RESTRICTED ZONE

SPEED ☐ EXCEEDED SPEED: 45 MPH ZONE ☐ LIGHT(S) DRIVING ☐ PROP. DAMAGE ☐ EXCESS ☐ OVER

✓ OTHER See Below

PERSONAL INJ. ☐ HOW YOU ☐ NOT KNOWN ☐ HOSP.

PLACE TIME NOTED 1115 AM

No Ave and 1st Street

VISIBILITY: DAY ☐ DAWN/DUSK ☐ TRAFFIC ☐ SURFACE: LIGHT ☐ HEAVY ☐ WET ☐ FOG/RAIN/SNOW ☐ OBSTRUE ☐ ICE

TRAFFIC 18 USC 13 RCW 5C4.440

DWI

CVB COPY

VIOLATOR AGAINST OWNER OR THIS VEHICLE AND OR THIS PERSON

AGE/BIRTH 2 SEC 251-36-[illegible] 03 1 41 36 5 10 180

FEET (4-D) 4th 4 3B 4 Blue Pl Lewis Mt

VIOLATION NO STATE TAG NUMBER SEX RACE LAST NAME FIRST NAME INIT HGT WGT

A946793 WA MW-2851 Zimmer C Allen 5

DD FORM 1805 MAY 71

468-46-4760

Ave Person
July 25, 74
9:30 AM

SWORN STATEMENT

For use of this form, see AR 190-30; the proponent agency is Office of The Provost Marshal General.

LOCATION	DATE	TIME	FILE NUMBER
PMO	24 Jun 24	0115 hrs	
LAST NAME, FIRST NAME, MIDDLE NAME	SOCIAL SECURITY NUMBER		GRADE/STATUS
Boyd Dewayne Hunter	480-72-9745		E-1
ORGANIZATION OR ADDRESS			
463rd MP Co			

Dewayne H Boyd, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

At approx 0055 hrs I pulled a white over Blue Ford (LTD) over for swaying over side to side at this time I smelled a strong odor of Alcohol on Subj Breath. Subj was then appr and Trans to PMO DWB

End of Statement

DWB

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF 1 PAGES
	DWB	

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF __ TAKEN AT __ DATED __ CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE __ OF __ PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

DA FORM 1 JUL 72 2823 SUPERSEDES DA FORM 2823, 1 JAN 69, WHICH WILL BE USED.

APPENDIX E

VERNON'S ANNOTATED MISSOURI STATUTES

Section 304.010

304.010. Manner of operation of motor vehicles—speed limits

1. Every person operating a motor vehicle on the highways of this state shall drive the vehicle in a careful and prudent manner and at a rate of speed so as not to endanger the property of another or the life or limb of any person and shall exercise the highest degree of care.

2. Except as otherwise provided by law no truck registered for a gross weight of more than nine thousand pounds shall be operated at any time in excess of sixty miles per hour, and no other vehicle shall be operated in excess of:

(1) Seventy miles per hour on any divided highway designated and marked as a federal route or any state-maintained highway designated as suitable for and marked by the state highway commission with appropriate speed limit signs, or, when lighted lamps are not required by law, on any other highway designated and marked as a federal route;

(2) Sixty-five miles per hour on any undivided highway designated and marked as a federal route or any state-maintained highway designated as suitable for and marked by the state highway commission with appropriate speed limit signs when lighted lamps are required by law;

(4) Sixty miles per hour on any other road or highway in the state when lighted lamps are required by law.

3. In any city, town or village where the speed limit is not set by local authority, no vehicle shall be operated at a speed in excess of forty-five miles per hour, except as provided in section 304.012. All ordinances of cities, towns or villages regulating the speed of vehicles on major state highways shall be designed to expedite the flow of traffic thereon to the extent consistent with public safety.

4. On any divided highway designated as part of the federal interstate system, no vehicle shall be operated at a speed of less than forty miles per hour, except when a slower speed is required for safe operation of the vehicle because of weather or other special conditions.

5. The county court of any county of the second class containing one hundred twenty-five thousand or more inhabitants or a county of the second class containing a state university may set a speed limit on any county road not within the limits of any incorporated city, town or village, lower than that otherwise provided in this section where the condition of the road or nature of the area requires a lower speed. The Court shall cause copies of any order establishing a speed limit on a county road to be sent to the chief engineer of the state highway department and the superintendent of the state highway patrol. After the roads have been properly marked by signs indicating the speed limits set by the county court, the speed limits shall be effective as those provided in this section.

6. The limits on speeds set by this section do not apply to the operation of any emergency vehicle as defined in section 304.-022. Nothing in subsection 2 and 3 shall make the speeds prescribed therein lawful in a situation that requires lower speed for compliance with the basic rule declared in subsection 1.

7. Any person violating this section is guilty of a misdemeanor.

8. Violation of the provisions of this section specifying speed limitations shall not be construed to relieve the parties in any civil action on any claim or counterclaim from the burden of proving negligence or contributory negligence as the proximate cause of an accident or as the defense to a negligence action.

(R.S. 1939 § 8383; L. 1957 p. 631 § 1; L. 1965 p. 594 § 1; L. 1965 p. 95 § 1; L. 1969 p. 417 § 1)